



petition procedurally barred. On April 29, 2020, the Court of Criminal Appeals reconsidered its procedural dismissal and entered a ruling denying on the merits the claims presented in Mr. Wardlow's state habeas application. That ruling removes the basis for this Court's procedural bar ruling, and that development calls for the judgment of this Court to be vacated, and the claims that were barred from merits review in his federal petition to be considered anew.

3. The criteria for granting a stay are:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Nken v. Holder*, 556 U.S. 418, 433-34 (2009). In a death penalty case, the second factor always weighs in favor of a stay, and the third and fourth factors generally weigh in favor of a stay if the first factor, the likelihood of success on the merits, weighs in the condemned petitioner's favor.

6. After reviewing the Motion, we submit that the Court will find that Mr. Wardlow has "made a strong showing that he is likely to succeed on the merits." *Nken, supra*.

WHEREFORE, Mr. Wardlow requests that the Court stay his execution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Burr", followed by a long horizontal line.

RICHARD BURR  
TBA No. 24001005  
PO Box 525  
Leggett, Texas 77350  
(713) 628-3391  
(713) 893-2500 fax  
dick@burrandwelch.com

Counsel for Billy Joe Wardlow

**CERTIFICATE OF CONFERENCE**

I certify that on June 16, 2020, I conferred by email with counsel for Respondent, Gwendolyn Vindell, on the underlying Motion for Relief from Judgment, and she has told me that she opposes the motion. Her opposition would necessarily extend to this instant motion.

A handwritten signature in black ink, appearing to read "Richard Burr", followed by a long horizontal line.

Richard Burr

**CERTIFICATE OF SERVICE**

I hereby certify that this motion was served on Respondent Davis through filing in the Court's ECF system, with service included upon Assistant Attorney General Gwendolyn Vindell, at her email address, *gwendolyn.vindell2@oag.texas.gov*, this 18<sup>th</sup> day of June, 2020.

A handwritten signature in black ink, appearing to read "Richard Burr", followed by a long horizontal line.

Richard Burr

## **Exhibit**

A TRUE COPY  
of the original hereof, I certify  
MARCUS CARLOCK  
District Court Clerk  
Titus County, Texas

This 6 day of APR 20 20  
By [Signature] District Clerk

Cause No. CR12764

Marcus Carlock  
District Clerk  
Elodia Chapa

STATE OF TEXAS

v.

BILLY JOE WARDLOW

§  
§  
§  
§  
§

IN THE 76TH DISTRICT COURT

OF

TITUS COUNTY, TEXAS

### EXECUTION ORDER

You, BILLY JOE WARDLOW, were indicted by the Grand Jury of Morris County, Texas, and charged with the offense of capital murder in cause numbers 6989, 7127, and 7130. After venue was transferred to Titus County, Texas, a jury in this Court returned a verdict finding you guilty of the offense of capital murder on February 8, 1995, in cause number 12,764. On February 11, 1995, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on April 2, 1997, with mandate issued on August 18, 1997. Subsequently, on September 15, 2004, the Court of Criminal Appeals dismissed your initial application for writ of habeas corpus. Thereafter, the District Court for the Eastern District of Texas, Sherman Division, denied your federal petition for writ of habeas corpus on August 21, 2017, and the United States Court of Appeals for the Fifth Circuit denied your application for a Certificate of Appealability on October 22, 2018. Afterwards, the United States Supreme Court denied your petition for writ of certiorari on October 15, 2019. A previous execution date was set by this Court for April 29, 2020. This Court now proceeds to modify your prior execution date and now enters the following order.

IT IS HEREBY ORDERED by this Court that the prior execution warrant of October 25, 2019, setting an April 29, 2020 execution date for BILLY JOE WARDLOW, is RECALLED.

IT IS HEREBY ORDERED by this Court that you, BILLY JOE WARDLOW, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 8th day of July, 2020, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and shall deliver such warrant to the Sheriff of Titus County, Texas to be delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the defendant, BILLY JOE WARDLOW, if not previously delivered.

The Defendant, BILLY JOE WARDLOW, is hereby remanded to the custody of the Sheriff of Titus County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this 3rd day of April, 2020.

A handwritten signature in cursive script, reading "Angela Saucier", is written over a horizontal line.

ANGELA SAUCIER  
Presiding Judge  
76th District Court  
Titus County, Texas